IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

AS.No. 868 of 1997(C)

OS.622/1994 of I ADDL.SUB COURT, KOZHIKODE
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APPELLANTS/DEFENDANTS
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1. **K.GIRIJA, AGED 24 YEARS**
   D/O CHEMBANKUTTY
   KAVAYATTU HOUSE
   PUNNASSERY, VIA NARIKKUNI
   KOZHIKODE TALUK

2. **SUDHAKARAN .K., AGED 45 YEARS**
   S/O CHEMBANKUTTY
   - DO- -DO-

3. **VASU.K., AGED 40 YEARS**
   S/O CHEMBANKUTTY
   - DO- -DO-

4. **K.BALAKRISHNAN, AGED 35 YEARS**
   -DO- - DO-

5. **K.CHANDRAN, AGED 30 YEARS**
   - DO- -DO-

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT/PLAINTIFF

P.KALIDASAN, AGED 36 YEARS
S/O NEELAKANDAN
PANGOT HOUSE, OLAVANNA AMSOM AND
DESOM, KOZHIKODE TALUK

BY ADV. SRI.THOMAS ANTONY
SRI.K.M.JAMALUDHEEN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.6860/1997 IN A.S.NO.868/1997

Dismissed

20-06-2007 **Sd/-, PIUS.C.KURIAKOSE, JUDGE**

/True Copy/

PA to Judge

PIUS.C.KURIAKOSE, J.

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A.S. No.868 OF 1997

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Dated this the 20th day of June, 2007

JUDGMENT

The defendants in a suit for compensation which was decreed by the trial court to a limited extent i.e. to the extent of Rs. 5000/- as against the claim of Rs. 25,000/- are the appellants. The parties to the suit are referred to by their ranks and static in the trial court for the sake of convenience. The case of the plaintiff was that the marriage between him and the first defendant was fixed after completing the formalities such as pennukanal, Nishchayam etc. Nishchayam was held on 14/11/1993 and the marriage was scheduled to be held on 27/03/1994 at Thavannur Sree Vishnu Temple. Defendant 2 to 5 are the brothers of the first defendant and the date 27/03/1994 was chosen because the 4th defendant's marriage was also fixed for the same day. According to the plaintiff, he made all arrangements for the solemnisation of marriage. Invitation cards were got printed. The plaintiffs started inviting his friends and relatives hoping that the marriage will be solemnised as

agreed. It was after several mutual visits and after making enquiries that the marriage was settled and the date was fixed. First defendant had even introduced the plaintiff to her friends as her fiancee and had even distributed sweets upon confirmation of the marriage. Since betrothal was over, there were no reasons for the petitioner to think that the respondents will go back on their words. While so, during the first week of March 1994 defendants 2 to 4 would call on the plaintiff and his brother Gokulan and others and intimate them that the marriage cannot be conducted since they have received some anonymous communications about the plaintiff. Specific reasons were not stated by them for their going back on the proposal. According to the plaintiff, he is decently employed in Cochin Ship yard. He belongs to a reputed family. His brothers are also decently placed in life. The defendants apart from retracting from their commitments made at the betrothal and failing to conduct the marriage are now scandalising in the plaintiff's and his family by making false imputations. The intention of the defendants, it is alleged is to lower the estimation of the plaintiff in the eyes of reasonably thinking public and to malign the

plaintiff. Therefore the plaintiff's brother issued a lawyer notice to the defendants calling upon them to tender an unconditional apology and to pay Rs. 50,000/- as compensation for the injury which had been caused to the plaintiff and his family. To the lawyer notice they sent reply raising untenable contentions. It was contended in the reply that the plaintiff was older by 16 years than the first defendant and it was on that reason that the defendants were not agreeable for the marriage. What had transpired was just formal seeing of the girl and the averments regarding customary ceremonies like pennukanal and Nishchayam are all stoutly denied in the reply notice. According to the plaintiff in addition to the insult he had to suffer agony also due to the retraction of the defendants from the marriage after the betrothal. He and his family are put to considerable mental agony. Limiting the claim for compensation of Rs. 25,100/- the suit was instituted for a decree for that amount.

2. A joint written statement was filed in the suit by the defendants contending that the suit is not maintainable either in the eye of law or in facts. The averments in the plaint that the marriage was

fixed after completing the formalities like pennukanal and nishchayam and that there was a betrothal ceremony on 14/11/1993 wherein a decision was taken to have the marriage solemnised on 27/03/1994 at Vishnu temple are all denied and are described as utter falsehood. In the month of October 1993, the plaintiff along with his two friends came over to the defendants house expressing his wish to marry the first defendant and requested defendants 2 to 4 to permit him to see their sister. Plaintiff was allowed to see the first defendant. But the first defendant did not like the appearance and disposition of the plaintiff and informed her brothers that she does not like the plaintiff who looks much older than herself. When the plaintiff was questioned about his correct age, he gave evasive answers. After the seeing the first defendant, the plaintiff declared that he liked her. The defendants were unable to express their dissenting opinion on consideration of politeness . The second defendant told the plaintiff on hearing his declaration that he will have to make enquiries and to consult with his astrologer also before making any commitment regarding alliance. The enquiry revealed that the age difference between the plaintiff and

the first defendant is more than 16 years and that the plaintiff's family set up is such that the first defendant will not be able to lead a peaceful life with the plaintiff. Though it is true that the 4th respondent's marriage was fixed for the day mentioned in the plaint, the marriage between the plaintiff and the first defendant was never fixed. The allegation regarding printing and issuance of invitation cards are all false. The documents produced by the plaintiff in that context are false documents created to support the plaint claim which is false. Within one week of the plaintiffs visit to their house, the defendants 2 to 5 informed the plaintiff that they do not wish to consider the plaintiff's proposal. Thereafter that the plaintiff concocted specimen invitation cards and bill for supporting his allegations in the suit. The averments in the plaint regarding visits in connection with the marriage proposal are false. The plaintiff visited the defendant's house only once and as a matter of fact the defendants 2 to 5 informed the plaintiff that within one week they will inform him about the decision. The written statement goes on to deny all the avermnets in the plaint including those regarding the conduct of betrothal.

3. The learned Subordinate Judge raised the following issues:

1) Whether there was any betrothal on 14/11/1993 and fixing of marriage between plaintiff and first defendant as alleged in the plaint?

2) Whether the plaintiff is entitled for compensation as prayed for ?

4. The evidence at trial on the side of plaintiff consisted of oral testimonies of PWs 1 to 6 and the documentary evidence of Ext.A1 to A7. The evidence on the side of the defendants was oral and the same consisted of DW1 second defendant and DW2 5th defendant. On a thorough and meticulous consideration of the evidence which was adduced by the parties , the learned Subordinate Judge found that there was a promise between the plaintiff and the defendants that the plaintiff will marry the first defendant and that there was breach of that promise. It was also found by the learned Sub Judge that there is no evidence to show that scandals were spread by the defendants about the plaintiff. After referring to the judgment of this court in **Ramalinga Mudali v.**

Natesa Mundali (1989 (1)KLT 932) and the judgment of the Division of the Gujarat High Court in **Miss Prema Koragokar v. Mustak Ahmed** (AIR 1987 Gujarat 106), the learned Subordinate Judge held that breach of promise of marriage is actionable and held that towards the mental agony sustained by the plaintiff on account of the breach of promise of marriage and on account of the special damages sustained by the plaintiff, the plaintiff is entitled for a sum of Rs. 5,000/- and hence decreed the suit for that amount.

5. I have heard Sri.P.V.Kunhikrishnan, learned counsel for the appellant and Sri.Thomas Antony, learned counsel for the respondents. Sri.P.V.Kunhikrishnan would assail the finding of the court below that there was a promise between the parties to have the marriage between the plaintiff and the first defendant solemnised and that the defendants have committed breach of that promise. According to him, the said finding was not justified on the evidence which was adduced in the case. There was mutual contradictions between the testimonies of PWs 1 to 6 and hence those testimonies should not have inspired confidence in the mind of the court below. Counter evidence adduced by the

defendants was much more convincing.

6. Sri.P.V.Kunhikrishnan's submissions were resisted by Sri.Thomas Antony who submitted that there was actually no warrant for interference with the judgment of the trial court.

I have made a re-appreciation of evidence. I find that the findings entered by the learned Subordinate Judge are justified on the evidence which came on record in the case. After all the learned Subordinate Judge had the advantage of seeing the witnesses and recording their testimonies. The learned Subordinate Judge has considered the rival versions in the realm of probabilities also. On my re-apprciation of evidence, I do not find any reason to vary the findings of the learned Subordinate Judge that there was an agreement between the parties to have the marriage of the plaintiff and the first defendant conducted on the date on which the marriage of the 4th defendant with a girl by name Savithri had also been fixed. What I feel is that in the matter of quantification of the damages to which the plaintiff is entitled , the learned Subordinate Judge was rather miserly. But in the absence of any cross objection from the side of the first

respondent, I do not propose to interfere with the determination of damages by the learned Subordinate Judge. The challenge against the impugned judgment and decree fails. The appeal will stand dismissed. However in the circumstances of this case, without any order as to costs.

PIUS.C.KURIAKOSE
JUDGE

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